

178858

MCNAIR LAW FIRM, P.A.
ATTORNEYS AND COUNSELORS AT LAW

www.mcnair.net

BANK OF AMERICA TOWER
1301 GERVAIS STREET, 17th FLOOR
COLUMBIA, SOUTH CAROLINA 29201

POST OFFICE BOX 11390
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE (803)799-9800
FACSIMILE (803)376-2277

April 10, 2006

Mr. Charles L. A. Terreni
Chief Clerk/Administrator
South Carolina Public Service Commission
Synergy Business Park, The Saluda Building
101 Executive Center Drive
Columbia, South Carolina 29210

**Re: BellSouth Telecommunications, Inc. – Transit Traffic Tariff 2005-50
Docket No. 2005-63-C**

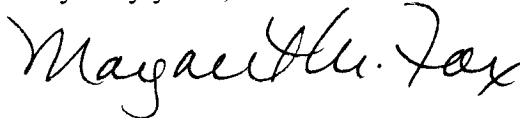
Dear Mr. Terreni:

Enclosed for filing on behalf of the South Carolina Telephone Coalition, please find an original and ten (10) copies of a Petition For Reconsideration of Order No. 2006-199 in the above-referenced matter. By copy of this letter and Certificate of Service, all parties of record are being served by U. S. Mail with a copy of this Petition For Reconsideration.

Please clock-in a copy of this filing and return it with our courier.

Thank you for your assistance.

Very truly yours,



Margaret M. Fox

MMF/rwm
Enclosures

cc: Parties of Record

RECEIVED DATE: Greenland 8/30/06
SERVICE: AK O. Delle

[illegible]

SCTC PETITION FOR RECONSIDERATION OF ORDER NO. 2006-199

The South Carolina Telephone Coalition ("SCTC"), pursuant to S.C. Code Ann. § 58-9-1200 (1976), S.C. Code Ann. § 1-23-310 et seq. (1976 & Supp. 1997), and applicable Commission rules and regulations, hereby petitions for reconsideration of the Commission's Order No. 2006-199, issued in this docket on March 28, 2006. Counsel for the SCTC received a copy of Commission Order No. 2006-199 on March 30, 2006. In support of the Petition for Reconsideration, the SCTC respectfully states the following:

1. On February 2, 2005, BellSouth Telecommunications, Inc. (“BellSouth”) filed with the Commission a proposed tariff that contains rates, terms and conditions for telecommunications carriers sending and receiving Transit Traffic via the BellSouth network. On February 9, 2005, SCTC filed a Petition to Intervene and Request to Suspend Tariff Filing Pending Investigation and Resolution of Intercarrier Arrangement and Compensation Issues (“SCTC Petition”). On April 29, 2005, BellSouth amended its earlier filed tariff (“Transit Traffic Tariff”). A hearing was scheduled on the matter for August 22, 2005. In the meantime, BellSouth and SCTC continued negotiations toward an agreement.

2. A hearing was held to address the various petitions and complaints regarding the Transit Traffic Tariff on August 22, 2005. At the beginning of the hearing, counsel for both BellSouth and SCTC informed the Commission that the parties had “reached an agreement, in principle.” See Transcript of Hearing at p. 11, lines 13-14; p. 12, lines 19-24. In fact, the parties had executed a “Term Sheet” that sets forth the general terms of the agreement in principle. As BellSouth’s counsel pointed out:

We still have to build the contract around the agreement in principle. I can say based on the relationship we’ve had in this process we don’t foresee any problems doing that, but we still have to do that. So as you know, the tariff that is subject to this proceeding applies only in the absence of agreement. Given there is an agreement, it’s obviously going to impact the participation of the [SCTC] members.

See Transcript of Hearing at p. 12, line 24 through p. 13, line 9. Counsel for SCTC likewise stated on the record his understanding that the parties had reached an agreement in principle and that the SCTC companies “will be entering into individual contracts with BellSouth” on that basis. Transcript of Hearing at p. 13, lines 20-24. SCTC’s counsel further stated:

As a result, the proposed tariff will not apply to the South Carolina Telephone Coalition companies. Therefore, we do not and are not taking a position with respect to the proposed tariff in this proceeding. . . . We will remain a party to the proceeding and continue to have an interest in the issue before the Commission

Transcript of Hearing at p.13, line 24 through p. 14, line 9.

3. Commission Order No. 2006-199 (the “Order”) dismissed ALLTEL’s complaint and found that the other “complaints against BellSouth in this matter should also be dismissed, since the complainants and BellSouth were able to negotiate commercial agreements.” Order at p. 3. The dismissal of ALLTEL’s complaint was based on the Commission’s findings that the Transit Traffic Tariff was filed pursuant to S.C. Code Ann. § 58-9-576, and that ALLTEL had failed to meet its burden of proof under that statute. In its Petition, the SCTC had argued in part that

“BellSouth’s Transit Tariff filing involves complex intercarrier arrangement and compensation issues that must be addressed and resolved by the Commission prior to allowing the tariff to go into effect,” and, therefore, it “is not a tariff filing that can be treated like a simple end user tariff filing under BellSouth’s alternative regulation authority.” SCTC Petition at para. 8.

4. The Order goes on to dismiss SCTC and other complaints based on the finding that “All Intervenor-Complainants were able to reach a commercial agreement on the issue at the time of the hearing on this matter, except ALLTEL.” Order at p. 6.

5. While the SCTC and BellSouth reached an agreement in principle prior to the hearing, and the parties have diligently continued negotiations toward an agreement, the devil has been in the details. The parties fully expect to resolve the final details of a settlement agreement in the near future, but at this time there is not a final settlement agreement.

6. Upon information and belief, all other parties, including ALLTEL, have reached commercial agreements with BellSouth. Thus, based on a reading the Order, it would appear that the proposed tariff may only apply to SCTC companies. The SCTC companies believe this was not the intent of the Commission, in that the Commission’s findings contained in Order No. 2006-199 indicate the Commission’s belief that the SCTC had reached settlement and would not be affected by the tariff. *See Findings of Fact and Conclusions of Law*, No. 5 (“All Intervenor-Complainants were able to reach a commercial agreement on this issue at the time of the hearing on this matter, except ALLTEL”) and No. 8 (“All other remaining complaints in this matter should be dismissed, in that the other parties came to agreements on the transit traffic matter with BellSouth.”)

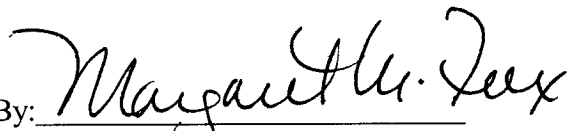
7. In order to ensure protection of the SCTC’s rights with respect to the issues raised in the SCTC Petition, and in light of the parties’ inability to reach consensus on the details of an agreement thus far, we respectfully request that the SCTC Petition be held in abeyance until such

time as the parties have reached a final agreement. In the unlikely event the parties do not reach agreement, the SCTC respectfully reserves the right to bring the issues back before the Commission for resolution.

8. The SCTC will continue to work toward a resolution of the outstanding issues with BellSouth, as we know BellSouth will do as well. However, until that time, we believe it is consistent with the Commission's intent as well as in the public interest, that the SCTC Petition and Request be held in abeyance and not dismissed, as the dismissal was based on an erroneous understanding that the parties had reached a final agreement on all issues.

WHEREFORE, the South Carolina Telephone Coalition respectfully requests that the Commission reconsider Order No. 2006-199 with respect to any findings that conflict with the positions taken in the SCTC Petition, hold in abeyance the SCTC's Petition to Intervene and Request to Suspend Tariff Filing Pending Investigation and Resolution of Intercarrier Arrangement and Compensation Issues, and grant such other and further relief as is just and reasonable.

Respectfully submitted,

By: 

M. John Bower, Jr.
Margaret M. Fox
McNair Law Firm, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800

ATTORNEYS FOR THE SOUTH
CAROLINA TELEPHONE COALITION

Columbia, South Carolina

April 10, 2006

CERTIFICATE OF SERVICE

Bonnie D. Shealy, Esquire
Robinson McFadden
Post Office Box 944
Columbia, South Carolina 29202

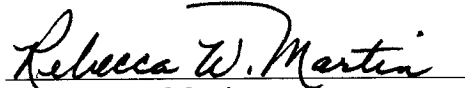
John J. Pringle, Jr., Esquire
Ellis, Lawhorne & Sims, P. A.
Post Office Box 2285
Columbia, South Carolina 29202

Gene V. Coker, Esquire
AT&T – Law and Governmental Affairs
1230 Peachtree Street, 4th Floor, Suite 4000
Atlanta, Georgia 30309

Robert D. Coble, Esquire
Nexsen, Pruet Adams Kleemeier, LLC
Post Office Drawer 2426
Columbia, South Carolina 29202-2426

Scott Elliott, Esquire
Elliott & Elliott
721 Olive Street
Columbia, South Carolina 29205

William R. L. Atkinson, Esquire
United Telephone & Sprint Communications
3065 Cumberland Circle, Mailstop GAATLD0602-612
Atlanta, Georgia 30339


Rebecca W. Martin
McNair Law Firm, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800

April 10, 2006

Columbia, SC